

RECORDATION NO. 2209 FILED
NOV 1 '99 2-15PM

LAW OFFICES

ROSS & HARDIES

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

150 NORTH MICHIGAN AVENUE
CHICAGO, ILLINOIS 60601-7567
312-558-1000

FAX
312-750-8600

WRITER'S DIRECT LINE: (312) 750-8655
WRITER'S DIRECT FAX: (312) 920-6161
WRITER'S EMAIL: susan.lichtenfeld@rosshardies.com

PARK AVENUE TOWER
65 EAST 55TH STREET
NEW YORK, NEW YORK 10022-3219
212-421-5555

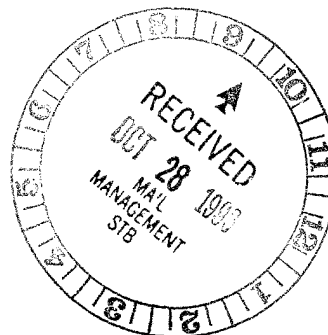
888 SIXTEENTH STREET, N.W.
WASHINGTON, D.C. 20006-4103
202-296-8600

SUSAN G. LICHTENFELD

October 27, 1999

Via Overnight Delivery

Mr. Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W., Suite 700
Washington, D.C. 20423



Dear Mr. Williams:

Enclosed for recordation pursuant to the provisions of 49 U.S.C. Section 11301(a) are two original executed copies and two photostatic copies of an Interim User Agreement (the "Agreement"), between Johnstown America Corporation and Commonwealth Edison Company, dated as of October 1, 1999, which Agreement is a primary document as defined in the Commissioner's Rules for the Recordation of Documents.

The names and addresses of the parties to the enclosed Agreement are:

Owner: Johnstown America Corporation
17 Johns Street
Johnstown, PA 15901

User: Commonwealth Edison Company
1411 Opus Place, Suite 200
Downers Grove, IL 60515-5701

The Agreement relates to 720 aluminum AeroFlow BethGon railcars marked CWEX 9001 through CWEX 9720 (both inclusive).

Mr. Vernon A. Williams

October 27, 1999

Page 2

Also enclosed is a check in the amount of \$26.00 payable to the order of the Surface Transportation Board covering the required recordation fee.

Kindly return one stamped original copy and two stamped photostatic copies of the enclosed document and the stamped photostatic copy of this letter to Susan G. Lichtenfeld at Ross & Hardies, 150 North Michigan Avenue, Suite 2500, Chicago, Illinois 60601.

Following is a short summary of the enclosed document:

Document to be Recorded

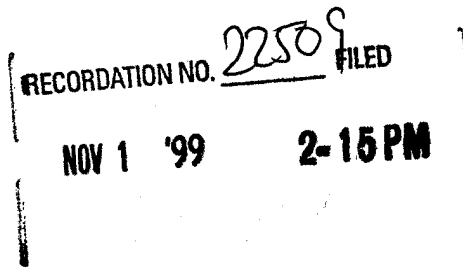
Interim User Agreement, dated as of October 1, 1999, between Johnstown America Corporation, Owner, and Commonwealth Edison Company, User, relating to the 720 aluminum AeroFlo BethGon railcars identified therein.

Very truly yours,


Susan G. Lichtenfeld

SGL:tc
w/encl.

cc: Robert W. Kleinman
Joseph A. McQuade



INTERIM USER AGREEMENT

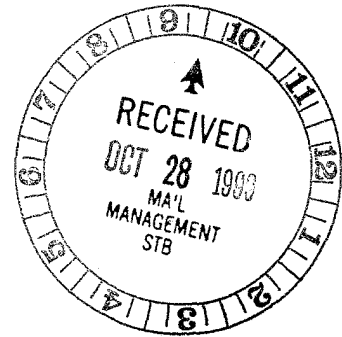
Dated as of October 1, 1999

between

JOHNSTOWN AMERICA CORPORATION

and

COMMONWEALTH EDISON COMPANY



720 Aluminum AeroFlo BethGon Railcars

INTERIM USER AGREEMENT

THIS AGREEMENT, dated as of October 1, 1999 by and between JOHNSTOWN AMERICA CORPORATION, a Delaware corporation (the "Johnstown") and COMMONWEALTH EDISON COMPANY an Illinois corporation ("User").

WITNESSETH:

WHEREAS, User desires to acquire the use of 720 aluminum AeroFlo BethGon railcars, to bear railroad road marks and numbers set forth on Schedule 1 hereto, (collectively the "Railcars" and individually a "Railcar");

WHEREAS, User and Johnstown have contracted for the purchase and sale of the Railcars pursuant to the Railcar Manufacturing Agreement dated as of September 15, 1998 between Johnstown and User (the "Purchase Order");

WHEREAS, User is obtaining commitments to finance the purchase of the Railcars pursuant to one or more permanent forms of financing (the "Financing") and anticipates that there will be multiple closings, with the first closing to occur on or about November 5, 1999, and the final closing to occur on or about December 15, 1999.

WHEREAS, User desires that it be permitted to use the Railcars pending the closing of such Financing, and Johnstown is willing to grant such temporary custody and possession to User, solely upon the terms and conditions hereinafter provided;

NOW, THEREFORE, in consideration of the premises, and the mutual covenants and agreements herein contained, the parties hereto agree as follows:

1. Subject to the terms and conditions contained herein and in the Purchase Order, Johnstown agrees to deliver physical possession of the Railcars to User, FOT Danville, Illinois. The rights of User hereunder in respect of each Railcar shall commence on the date of acceptance of each group of Railcars by User from Johnstown, with respect to the Railcars accepted thereunder (the "Acceptance") and, unless sooner terminated pursuant to the provision hereof, shall end on the date of payment of the purchase price of such Railcar by User, or by its designee under the Financing (the "Closing"). Whether or not the Financing shall then have occurred, User, on November 15, 1999, shall purchase and pay for, in cash, all Railcars previously accepted by User and not previously paid for by User or its designee, and the obligation of User so to do shall be absolute and unconditional, regardless of the condition of such Railcars or any other event or circumstance. At each Closing with respect to any Railcars, Johnstown shall sell such Railcars to User or such purchaser as User may provide, at the purchase price of \$[REDACTED] per Railcar, plus applicable taxes, freight allowed to Chicago, Illinois and other charges, if any, as set forth in the Purchase Order. Nothing in this Agreement shall relieve User of its obligation to take, purchase and pay for the Railcars in accordance with the terms of the Purchase Order nor shall it relieve Johnstown of its obligations under the Purchase Order.

2. On Acceptance of any Railcar and departure of such Railcar from Johnstown's manufacturing plant, User shall assume the responsibility and risk of loss with respect to such Railcar and will deliver to Johnstown an Acceptance Acknowledgment substantially in the form attached hereto as Exhibit A (the "Acceptance Acknowledgment"). Execution of the Acceptance Acknowledgment by User shall constitute acceptance by User of the Railcars identified in the Acceptance Acknowledgment for all purposes of this Agreement and the Purchase Order. On Acceptance, Johnstown's warranty with respect to such Railcar will commence.

3. Full and complete title to the Railcars shall remain in Johnstown until each Closing for such Railcar and User's rights and interests therein shall be solely that of temporary possession, custody, and use under this Agreement. Neither User nor any person claiming by through or under User shall acquire any title to or ownership of the Railcars, or any portion thereof, by virtue of this Agreement or the temporary possession and use of the Railcars by User under or pursuant to this Agreement. Transfer of title to any Railcar to User or to any purchaser provided by User shall be effected only at each Closing by delivery by Johnstown of a bill of sale to User or to such purchaser; provided, however, that title to different Railcars may be transferred at different times and under separate bills of sale, to the extent that such Railcars shall be subject to different financing arrangements. When the purchase price of any Railcar has been paid in full to Johnstown, together with all other amounts payable to Johnstown hereunder with respect to such Railcar, and Johnstown has delivered an appropriate bill of sale, this Agreement shall automatically be terminated with respect to such Railcar without further action by or notice to any party concerned. Prior to delivery of any Railcar, User shall do such acts as may be required by law, or requested by Johnstown, for the protection of Johnstown's title to and interest in the Railcars, including, without limitation,

¹ Dollar amount to be redacted before the document is filed with the STB.

recording, at User's expense, a fully signed counterpart of this Agreement with the Surface Transportation Board ("STB"), with the corresponding offices in Canada if any of the Railcars will be used in Canada, and wherever else necessary to protect Johnstown's interest. Upon receipt of all payments required to be made hereunder and under the Purchase Order with respect to any Railcars, Johnstown shall deliver to User or its designee a release of Johnstown's right, title and interest in such Railcars, in the form attached hereto as Exhibit B, such release to be filed by Johnstown, at User's expense, with the STB.

4. This Agreement is an arrangement under which User will have temporary possession, custody, use and quiet enjoyment of the Railcars to be purchased from Johnstown, and the risk of loss of the Railcars after Acceptance and departure from Johnstown's manufacturing plant is on User. User will, at all times while this Agreement is in effect and at its own expense, cause to be carried and maintained in full force and effect in such amounts and with such terms (including co-insurance, deductibles, limits of liability and loss payment provisions) as are in keeping with the terms applicable to other railcars owned or leased by User: (i) public liability insurance against loss or damage for personal injury, death or property damage occurring as a result of the ownership, maintenance, use or operation of any Railcar; and (ii) property damage insurance on the Railcars; provided, however, that User may self-insure with respect to any or all of the above as is customary under User's risk management program; and provided, further, that any such self-insurance will be comparable to self-insurance provisions generally applicable to other comparable equipment owned or leased by User. Any liability insurance policies maintained by User while this Agreement is in effect shall name Johnstown as an additional insured and User agrees to provide Johnstown, upon Johnstown's reasonable request, with such information concerning any insurance policies maintained by User as Johnstown may reasonably request.

5. User agrees, so long as this Agreement remains in effect, (i) to use the Railcars exclusively in unit train service to deliver coal to or from one or more generating stations to which it delivers coal and (ii) that none of the Railcars shall be shipped beyond the boundaries of the United States, except with the prior written consent of Johnstown.

6. In addition to any other rights or remedies which Johnstown may then have under law, upon default by User in performing any term of this Agreement or the Purchase Order, Johnstown, without demand or notice, may, but shall not be obligated to, terminate this Agreement, and upon such termination, User shall, if requested by Johnstown, immediately assemble all of the Railcars, make them available to Johnstown at such place or places as Johnstown may designate and store, protect, maintain and preserve the Railcars pending receipt of further instructions from Johnstown, and shall thereafter transport, at the risk and cost of User, all or any portion of the Railcars to such place or places as Johnstown shall reasonably designate.

7. It is the intent of the parties that Johnstown shall suffer no loss as a result of this Agreement and User agrees that it will permit no liens of any kind to attach to the Railcars (other than liens created by Johnstown), and that it will (a) indemnify, defend, and save harmless Johnstown from and against all claims, expenses, costs, or liabilities of whatsoever kind or nature

arising out of retention by Johnstown of title to the Railcars or out of the temporary possession, use and operation thereof by User during the period when title thereto remains in Johnstown, or otherwise out of this Agreement (including without limitation consequential damages and lost profits under the Purchase Order) and (b) pay any and all taxes, (other than income taxes imposed on Johnstown by any foreign, federal, state or local taxing authority and any fines, charges or penalties imposed against Johnstown in connection with any such income taxes), fines, fees, charges, and penalties that may accrue or be assessed or imposed upon the Railcars or Johnstown because of its retention of title to the Railcars or because of any person's use, marking, operation, management or handling of the Railcars after Acceptance and departure from Johnstown's Manufacturing Plant and while title to such Railcars remains in Johnstown pursuant to this Agreement. Each party agrees to indemnify and hold harmless the other, on an after-tax basis, for any claims or costs imposed on the indemnified party as a result of a breach of this Agreement by the indemnifying party.

8. User shall, at its own expense, keep and maintain the Railcars in good order, repair and running condition and will, at its option, repair or replace or promptly pay to Johnstown the purchase price in cash of those Railcars which may be damaged or destroyed by any cause during the term of this Agreement. The design, construction or specifications of any Railcar, or any part thereof, may not be changed without the prior written approval of Johnstown. User shall maintain, use and operate the Railcars in compliance with all applicable laws, rules and regulations, including, without limitation, the Interchange Rules of the Association of American Railroads.

9. Prior to the physical delivery of any Railcar to User it will be marked and numbered as set forth on Schedule 1 hereto. No road marks or numbers shall be placed on the Railcars other than those specified on Schedule 1 hereto.

10. On each Closing of any Railcar, in addition to the amounts to be paid to Johnstown for the purchase of such Railcars pursuant to the provisions of Section 1 hereof, User agrees to pay Johnstown in United States funds, by wire transfer to an account specified by Johnstown, to compensate Johnstown for its agreement to allow User to take possession of and use such Railcars prior to each Closing, the following¹:

- (i) with respect to the Railcars to be delivered at a Closing, \$[REDACTED] per Railcar per day for each day elapsed from the date of Acceptance

¹ Dollar amounts in clauses (i) and (ii) are to be redacted before the document filed with the STB.

of such Railcar and departure from Johnstown's Manufacturing Plant to the earlier of such Closing or November 15, 1999; provided that, if for whatever reason the Railcars are not paid for by December 15, 1999, User shall continue to be obligated to pay and shall pay Johnstown \$[REDACTED] per Railcar per day until such Railcar is paid for.

- (ii) all reasonable legal expenses incurred by Johnstown in connection with the negotiation, execution and delivery of this Agreement (not to exceed \$2,000), and all reasonable legal expenses incurred by Johnstown in connection with the enforcement of this Agreement, less any amounts previously paid by User to Johnstown on account of such expenses.

11. User hereby makes the following representations and warranties to Johnstown, the truth and accuracy of which shall be a condition precedent to the obligation of Johnstown to deliver any Railcars to User hereunder:

- a. User is a corporation, duly organized, validly existing and in good standing under the laws of the State of Illinois, has all requisite power and authority to execute and deliver and to perform its obligations under this Agreement and any related documents delivered by User in connection herewith (hereinafter collectively referred to as the "User Documents"), to carry on its business as now conducted, and is duly qualified and in good standing in such other jurisdictions in which the failure to so qualify or be in good standing could adversely affect its ability to perform its obligations under the User Documents.
- b. The User Documents have been duly authorized, executed and delivered by User, and assuming the due authorization, execution and delivery of such documents by Johnstown, are legal, valid and binding instruments enforceable against User in accordance with their terms, except as enforcement may be limited by general principles of equity or by bankruptcy, insolvency, reorganization, moratorium or similar laws relating to the enforcement of creditors' rights generally.
- c. No authorization or approval from any governmental or public body or authority of the United States of America, or of any of the States thereof or the District of Columbia, is necessary for the execution, delivery and performance by User of the User Documents.
- d. Neither the execution and delivery of the User Documents nor the consummation of the transaction therein contemplated nor the fulfillment of, or compliance with, the terms and provisions thereof will conflict with, or result in a breach of, any of the terms, conditions or provisions of the organizational documents or the by-laws

of User, or of any bond, debenture, note, mortgage, indenture, deed of trust, lien, agreement or other instrument to which User is a party or by which it or its property may be bound, or constitute (with or without the giving of notice or the passage of time or both) a default thereunder, or result in the creation of any lien on the Railcars (other than any lien in favor of Johnstown) or upon any property of User.

- e. Neither the execution and delivery by User of the User Documents nor the consummation of the transactions therein contemplated nor the fulfillment of, or compliance with, the terms and provisions thereof will conflict with, or result in a breach or violation of, any of the terms, conditions or provisions of any law, or any regulation, rule, order, award, injunction or decree of any court or governmental instrumentality or arbitrator.

12. Johnstown shall have the right to assign its rights under this Agreement, provided that Johnstown shall not have the right to assign its obligations arising under the Purchase Order, including, without limitation, its obligation to build, deliver and provide warranties for the Railcars.

13. This Agreement shall be interpreted under, and its performance shall be governed by, the laws of the Commonwealth of Pennsylvania without regard to its conflicts of laws doctrine, and the applicable federal laws of the United States of America.

14. This Agreement shall be binding upon, and shall constitute the complete agreement between the parties and their respective successors and assigns, with respect to the subject matter hereof, and may be amended or modified only in a writing lawfully executed by the parties hereto. Any provision of this Agreement determined to be unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such unenforceability without invalidating the remaining provisions hereof.

15. Any amounts payable to Johnstown hereunder which are not paid when due shall bear interest from the due date thereof until paid at the rate of ten percent (10%) per annum, but in no event greater than the maximum rate permitted by applicable law.

16. All communications under this Agreement shall be in writing or by a telecommunications device capable of creating a written record, and any such notice shall become effective (a) upon personal delivery thereof, including, without limitation, by overnight mail and courier service, (b) five (5) days after the date on which it shall have been mailed by United States mail (by certified mail, postage prepaid, return receipt requested), or (c) in the case of notice by a telecommunications device, when properly transmitted, addressed to each party at the following addresses or to such other address as the party to whom the same is intended shall specify in conformity with the foregoing:

If to JOHNSTOWN AMERICA CORPORATION:

Johnstown America Corporation
17 Johns Street
Johnstown, Pennsylvania 15901
Attention: Contract Administrator
Fax No. (814) 533-5064

With a copy to:

Susan G. Lichtenfeld
Ross & Hardies
150 North Michigan Avenue
Chicago, Illinois 60601
(312) 558-1000
Fax No. (312) 920-6161

If to User:

Commonwealth Edison Company
1411 Opus Place, Suite 200
Downers Grove, IL 60515-5701
Attention: Larry W. Siler, Fuel Department
(630) 663-5791
Fax No. (630) 663-5780

17. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all such counterparts shall together constitute but one and the same instrument.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto and have caused this Agreement to be executed by their respective officers thereunder duly authorized as of the day and year first above written.

JOHNSTOWN AMERICA CORPORATION

By Michael P. Siska, Jr.

Name: MICHAEL P. SISK, JR.

Its: CONTRACT ADMINISTRATOR

USER

COMMONWEALTH EDISON COMPANY

By Emerson W. Lacey

Name: Emerson W. Lacey

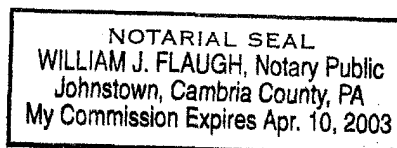
Its: Vice President

COMMONWEALTH OF PENNSYLVANIA)
) SS:
COUNTY OF CAMBRIA)

On this 26th day of Oct, 1999, before me personally appeared MICHAEL SISK, to me personally known, who, being by me duly sworn, says that he is the CONTRACT ADMIN, of JOHNSTOWN AMERICA CORPORATION, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged before me that the execution of the foregoing instrument was the free act and deed of said corporation.

William J. Flaugh
Notary Public

My commission expires: _____

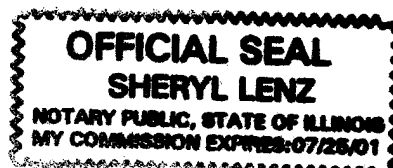


STATE OF ILLINOIS)
) SS:
COUNTY OF DuPage)

On this 22 day of October, 1999, before me personally appeared Emerson W. Lacey to me personally known, who, being by me duly sworn, says that he is Vice President of COMMONWEALTH EDISON COMPANY, that said instrument was executed on behalf of said corporation by authority of its Board of Directors, and he acknowledged before me that the execution of the foregoing instrument was the free act and deed of said corporation.

Sheryl Lenz
Notary Public

My commission expires: 7/25/01



SCHEDULE 1

TO

INTERIM USER AGREEMENT

720 ALUMINUM AEROFLO BETHGON RAILCARS BEARING THE FOLLOWING ROAD
MARKS AND NUMBERS (BOTH INCLUSIVE):

CWEX 9001 - CWEX 9720

EXHIBIT "A"
TO
INTERIM USER AGREEMENT

ACCEPTANCE ACKNOWLEDGMENT

Type of Equipment:	
Place Accepted:	
Date Accepted:	
Number of Cars:	
Reporting Marks:	

Car Numbers

Car Weights

Car Numbers

Car Weights

I have been appointed as the duly authorized representative of COMMONWEALTH EDISON COMPANY ("User") for the purpose of inspecting, accepting, and receiving delivery of the units of railroad equipment described below (the "Cars"), which are referred to in the Interim User Agreement dated as of October 1, 1999 (the "Agreement"), between Johnstown America Corporation ("Builder") and User. Title to the Cars does not pass upon such acceptance, but only passes to User or its assigns upon payment of the purchase price therefore and delivery of title to the Cars at the Closing of such Cars, as described in the Agreement. Capitalized terms used herein and not otherwise defined herein shall have the meanings as defined in the Agreement.

Authorized Representative of User

Date: _____, _____

EXHIBIT "B"

to

INTERIM USER AGREEMENT

TERMINATION OF AGREEMENT

THIS TERMINATION OF AGREEMENT ("Termination"), is made this ____ day of _____, _____, by and between Johnston America Corporation, a Delaware corporation ("Johnstown"), and COMMONWEALTH EDISON COMPANY, an Illinois corporation ("User").

WHEREAS, Johnstown and User are parties to an Interim User Agreement, dated as of _____, ____ (the "Agreement"); and

WHEREAS, the Agreement was duly filed for recordation with the Surface Transportation Board (the "STB") pursuant to 49 U.S.C. Section 11301, on _____, _____, at _____ .m. and given Recordation Number _____; and

WHEREAS, Johnstown and User desire to terminate and cancel the Agreement with respect to the equipment described herein and to record such termination and cancellation with the STB;

NOW THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt of which is acknowledged, User and Johnstown, intending to be legally bound, agree as follows:

1. User and Johnstown hereby terminate and cancel the Agreement, effective as of the date this Termination is filed with the STB with respect to the equipment described on Schedule 1 attached hereto (hereinafter, the "Terminated Equipment"), and User and Johnstown hereby agree that no rights, duties or liabilities under the Agreement with respect to such terminated Equipment shall survive such termination and cancellation of the Agreement, except with respect to acts, events, or omissions under the Agreement occurring on or prior to the date hereof.
2. The parties agree to record this Termination with the STB so as to release any lien against the Terminated Equipment created by or arising out of the Agreement.
3. Nothing herein contained shall be construed to terminate and cancel the Agreement with respect to any equipment other than the Terminated Equipment hereinabove specifically described.
4. This Termination may be executed in any number of counterparts, each executed counterpart constituting an original but all together only one Termination.

IN WITNESS WHEREOF, Johnstown and User have caused this Termination to be executed as of the day and year first above written.

JOHNSTOWN AMERICA CORPORATION, a
Delaware corporation

By _____
Its _____

COMMONWEALTH EDISON COMPANY
an Illinois corporation

By _____
Its _____

COMMONWEALTH OF PENNSYLVANIA)
)
COUNTY OF CAMBRIA)

On this, the ____ day of _____, ____, before me, a Notary Public in and for said County and State, personally appeared _____ of JOHNSTOWN AMERICA CORPORATION, who acknowledged himself to be a duly authorized officer of JOHNSTOWN AMERICA CORPORATION, and that, as such officer, being authorized to do so, he executed the foregoing instrument for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal on the date above mentioned.

Name: _____
 Notary Public
 My Commission Expires: _____
 Residing in _____

STATE OF ILLINOIS)
)
COUNTY OF)

On this, the ____ day of _____, _____, before me, a Notary Public in and for said County and State, personally appeared _____ of COMMONWEALTH EDISON COMPANY, who acknowledged himself to be a duly authorized officer, of COMMONWEALTH EDISON COMPANY and that, as such officer, being authorized to do so, he executed the foregoing instrument for the purposes therein contained.

Name: _____
 Notary Public
 My Commission Expires: _____
 Residing in _____

SCHEDULE 1
TO TERMINATION OF AGREEMENT